

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) No. 2:14-cr-63
)
BARBARA GASICH,)
)
Defendant.)

OPINION AND ORDER

Barbara Gasich has filed an Emergency Motion for Reduction in Sentence Pursuant to 18 U.S.C. § 3582(c)(1)(A), as Amended by the First Step Act of 2018. [DE 370]. For the reasons set forth below, the motion is GRANTED.

Background

Barbara Gasich is currently serving a 3-year sentence for filing false tax refund claims. When I sentenced Barbara Gasich and her husband, George Gasich, back in August 2016, I staggered their sentences so that one parent could always be around for their young child who still lived at home. George Gasich served his 36 month sentence first, and then Barbara was scheduled to report 30 days after his release, or by June 25, 2019, for her 36 month term of imprisonment.

Just a few days before her report date, on June 20, 2019, Gasich filed a motion for an extension of time to report to the Bureau of Prisons due to a recent biopsy which indicated she had metastatic breast cancer. [DE 360.] I granted her a 30-day extension of time to report. [DE 362.] Gasich filed a second motion for extension of time to report

to the BOP. [DE 363.] The Government opposed this motion due to inconsistent and inadequate medical documentation Gasich had provided. [DE 364.] I denied the second motion for extension of time to report [DE 365], and Gasich did timely report to the BOP on July 25, 2019.

Discussion

The instant motion requests compassionate release. Prior to the First Step Act, Section 3582(c)(1)(A) provided that only the BOP could bring a motion for compassionate release. However, Section 603(b) of the Act amended this provision to permit a defendant to bring such a motion as well. Specifically, the Act provides that the Court, upon motion of the defendant after the lapse of 30 days from the receipt of a request by the warden of the facility¹, may reduce the term of imprisonment after considering the facts set forth in section 3553(a), if it finds that “extraordinary and compelling reasons warrant such a reducton.” 18 U.S.C. § 3582(c)(1)(A)(i). In the Commentary, the Commission elaborated on what are “extraordinary and compelling reasons” which include the defendant is suffering from a terminal illness or the defendant is suffering from a serious medical condition that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which she is not expected to recover. U.S.S.G. § 1B1.13.

I find that there are extraordinary and compelling reasons to release Gasich in this case. Notably, the Government agrees and supports the motion for compassionate

¹In this case, the warden received Gasich’s request for release on August 3, 2019, but no final decision has been made by the BOP yet. [DE 370-1.]

release. [DE 372.] With the current motion, Gasich has submitted specific medical documents from the providers associated with the Federal Medical Center-Carswell in Fort Worth, Texas (where she is being housed), which show that Gasich's condition has rapidly deteriorated since her admission at the end of July. Gasich's Stage 4 metastatic breast cancer has spread to her bones, several lymph nodes, chest muscle, wall, liver, has metastasized to her brain, and is indicative of a rapidly progressive breast cancer. [DE 370-3 at 94; 370-6.] According to FMC-Carswell's medical personnel, a person suffering from Gasich's condition has a median survival of four months. [*Id.* at 32, 39.] Additionally, the records show that an emergency room doctor saw Gasich on August 28, 2019, and stated they "[a]ll [are] in agreement regarding [her] poor prognosis" and that "compassionate discharge from prison will now be expedited."² *Id.* at 39. Gasich is therefore suffering from a terminal illness, which qualifies as an extraordinary and compelling reason for her release. *See, e.g., United States v. Beck*, No. 1:13-CR-186-6, 2019 WL 2716505, at *7-8 (M.D.N.C. June 28, 2019) (finding extraordinary and compelling reasons for compassionate release where inmate suffered from invasive breast cancer).

In considering the required factors under section 3553(a), I note that the history and characteristics of the defendant has changed, as has the need for the sentence imposed to provide the defendant with medical care in the most effective manner. 18 U.S.C. § 3553(a)(1), (a)(2)(D). In particular, Gasich's history and characteristics now include her diagnosis of terminal cancer. Additionally, while she is certainly receiving

² Government counsel has been in contact with individuals at the BOP who are proceeding with the required administrative review and processing Gasich's request internally. However, the BOP stated it did not object to the Government joining Gasich's motion for compassionate release. [DE 372 at 2.]

medical care at the BOP, there are challenges associated with that, not the least of which is that Gasich's access to medical specialists and sub-specialists is more limited in the BOP than in the community. [DE 370-8 at 2-5.] Finally, I have taken note of the letters of support submitted by Gasich's friends and family, who will be able to support Gasich at her home in Florida during this difficult time. [*Id.* at 8-19.]

In sum, I find that extraordinary and compelling circumstances are present in this case and warrant the result of compassionate release. Gasich's terminal breast cancer which is progressing and spreading at a rapid rate, combined with the Government joining this motion, and the BOP's own medical personnel who recognize the poor prognosis and have also recommended a compassionate discharge all support my conclusion.

Conclusion

For the reasons set forth above, the Emergency Motion for Reduction in Sentence Pursuant to 18 U.S.C. § 3582(c)(1)(A), as Amended by the First Step Act of 2018 [DE 370] is GRANTED. IT IS ORDERED that Defendant Barbara Gasich's term of imprisonment is hereby reduced to a sentence of time served. It is FURTHER ORDERED that Barbara Gasich shall be released from the custody of the Bureau of Prisons as soon as the release plan is implemented, and travel arrangements can be made. The Clerk of Court is ORDERED to send a copy of this Order to the Warden of the Federal Medical Center-Carswell in Fort Worth, Texas.

SO ORDERED.

ENTERED: September 9, 2019

/s/ Philip P. Simon
PHILIP P. SIMON, JUDGE
UNITED STATES DISTRICT COURT